

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA  
HARRISBURG DIVISION

UNITED STATES OF AMERICA : CASE NO.  
v. :  
MURRAY ROJAS : 1:15-CR-00169

TRANSCRIPT OF PROCEEDINGS  
SENTENCING

Held before the HONORABLE SYLVIA H. RAMBO  
May 6, 2019, commencing at 9:34 a.m.  
Courtroom No. 3, Federal Building, Harrisburg, Pennsylvania

APPEARANCES:

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For the United States

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Proceedings recorded by machine shorthand; transcript  
produced by computer aided transcription.

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Wendy C. Yinger, RMR, CRR  
Official Court Reporter  
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1 (Conference held in chambers:)

2 THE COURT: I understand you requested this.

3 MR. GOLDMAN: No. I said to Mr. Behe, he was  
4 standing up at the bar of the court, and I said to him, I  
5 expect that this is going to take some time.

6 THE COURT: Okay.

7 MR. GOLDMAN: And that instead of standing, I just  
8 asked permission to be sitting at counsel table.

9 THE COURT: That's fine. Well, we can do it here,  
10 unless you prefer it out in the public.

11 MR. GOLDMAN: The sentencing, Your Honor?

12 THE COURT: Yes. Do you want to have it out in the  
13 open court?

14 MR. GOLDMAN: Yeah, I think it has to be.

15 THE COURT: All right. Sorry, it was my  
16 understanding you requested this. We'll go out. We'll be  
17 right out.

18 (Conference in chambers concluded at 9:35 a.m.)

19 (Proceedings reconvened in open court at 9:40 a.m.)

20 THE COURT: Good morning, everyone. Mr. Behe, call  
21 your case.

22 MR. BEHE: Yes, Your Honor. May it please the Court,  
23 this is the time and place set for sentencing in the matter of  
24 the United States of America versus Murray Rojas, which is at  
25 this court's criminal docket number 15-CR-169. The record

1 should reflect that Mrs. Rojas is present in court with  
2 counsel. And as I said, this is the time and place set by the  
3 Court for sentencing in this matter, and we're proposed to  
4 proceed.

5 THE COURT: First of all, Mrs. Rojas, have you  
6 reviewed the pre-sentence report with your counsel?

7 THE DEFENDANT: Yes.

8 THE COURT: There have been some objections initially  
9 filed to the report. One was the use of the United States  
10 Sentencing Guideline Section 2B1.1. And the Court will sustain  
11 that finding. It relies on two cases out of the First Circuit,  
12 *United States versus Almedia*, 710 Fed.3d 437, and *United States*  
13 *versus Ihenacho*, 716 Fed.3d 266. So with that ruling on the  
14 base offense level, that is the Court's position with regard to  
15 that. Now there was also an objection to the loss amount.

16 MR. BEHE: Your Honor, did I understand you to  
17 overrule the objection or sustain?

18 THE COURT: I overruled the objections based on those  
19 two cases.

20 MR. GOLDMAN: Your Honor?

21 THE COURT: Yes.

22 MR. GOLDMAN: Can we deal with one at a time?

23 THE COURT: I'm making a ruling now on --

24 MR. GOLDMAN: Yeah, I want to present evidence in  
25 that regard before you make a ruling.

1 THE COURT: Isn't it a little late?

2 MR. GOLDMAN: No, not at all. We're entitled at a  
3 sentencing hearing to present evidence in support of our  
4 objections to the pre-sentence report.

5 MR. BEHE: But in this particular case, Your Honor,  
6 there was an objection. There was a finding by the probation  
7 office, and Your Honor made a ruling. Their objection is  
8 preserved. And unless there was something in addition to it  
9 that was not submitted to probation, I don't know that this is  
10 the proper time.

11 THE COURT: You can take an appeal on that issue.

12 MR. GOLDMAN: Okay. I just want to make a statement  
13 on the record for appellate purposes because I have to preserve  
14 this.

15 THE COURT: Go ahead.

16 MR. GOLDMAN: I wanted to present transcripts of the  
17 Government cooperating veterinarians who have stated that all  
18 the decisions as to the false representations, being the vet  
19 treatment sheets to the racing commission and the billing  
20 records that went out, was all by them without participation or  
21 knowledge by Ms. Rojas.

22 And our contention at the time of sentencing is,  
23 under the law, in order to show an intent to defraud, you have  
24 to show that Murray Rojas was involved in a conspiracy to  
25 misrepresent or to commit a fraud. And there's no evidence.

1 In fact, the evidence established at trial by the Government's  
2 own witnesses verify that this was a separate conspiracy  
3 committed by the veterinarians.

4 Based on that, there is no evidence to substantiate  
5 the felony conviction, and she shouldn't be sentenced to a  
6 guideline range that starts at two and a half years, because  
7 without that evidence, it should be a zero to six. I'm  
8 prepared to quote from the transcripts. If the Court precludes  
9 me from doing so, I can't -- I'll take it up on appeal.

10 THE COURT: Mr. Behe.

11 MR. BEHE: I agree that's the place to take it up.  
12 It's part of the trial record. The transcripts are available.  
13 Nothing is new, it's all there. The Court has heard it and  
14 ruled on it.

15 MR. GOLDMAN: I would ask the Court to state on the  
16 record for appellate purposes what is the misrepresentations or  
17 fraud that the Court is relying on to make this a felony  
18 conviction as opposed to a misdemeanor conviction?

19 THE COURT: First of all, the jury made findings of  
20 fraud in the verdict slip.

21 MR. GOLDMAN: Yeah, but that should not be  
22 controlling because there is no evidence to substantiate that.  
23 That should have been vacated after the verdict. The Court has  
24 a duty to make an independent finding of whether or not that  
25 jury finding is supported in the record.

1 THE COURT: Why did you not bring this up earlier?

2 MR. GOLDMAN: We have brought this up. We have  
3 brought this up. And we stated in our sentencing memo -- this  
4 is the first time in all my years doing federal law that we do  
5 a sentencing memorandum that raises all of this, cites to the  
6 record, and the Government submits no counter-statement in that  
7 regard.

8 And further, and further, this Court found in its  
9 last opinion that there is a distinction between dispensing a  
10 drug and administering a drug. The Court then found that in  
11 sustaining the misbranding conviction, the Court found there is  
12 evidence in this case that the veterinarians dispensed drugs to  
13 Murray Rojas and then used those drugs which were dispensed to  
14 her to administer them to the horses.

15 There is no evidence in the record that supports  
16 that. And given that, the misbranding violation should be  
17 vacated at this time before sentencing. I challenged the  
18 Government to find anywhere in the record -- because it is  
19 their Brady obligation to state to this Court that your finding  
20 has no basis on the record -- I challenged them to present that  
21 in advance of the sentencing.

22 They did not respond to that. And so our statement  
23 goes uncontested that the Court's decision that the drugs that  
24 were dispensed to Murray Rojas were then administered has no  
25 support in the record. So I've raised all these, Your Honor.

1 I can't help it if the Government doesn't join in our  
2 objections and show where we're wrong in the record.

3 And with that, I don't see how this Court can, one,  
4 sentence Ms. Rojas on the misbranding convictions; and for  
5 purposes of sentencing, there is no evidence to support a  
6 felony sentencing in this case.

7 MR. BEHE: Your Honor, first, I would start, as Your  
8 Honor did, with the verdict, not just on the specific findings  
9 of fraud, but the Count 21 alleged criminal conspiracy with the  
10 objects of those co-conspirators, including the Defendant, to  
11 perpetrate a fraud and discussed how the co-conspirators  
12 engaged in conduct that constituted fraud and deception to  
13 carry out this misbranding scheme.

14 So you don't have to look any further than the jury's  
15 conviction in Count 21 of the criminal conspiracy where the  
16 objects of the conspiracy and the manner and means were  
17 specifically spelled out.

18 Secondly, the record fully supports it. There was a  
19 motion to dismiss the indictment, a Rule 29 motion, a second  
20 Rule 29 motion. Your Honor's ruled on it. This isn't -- it's  
21 a fundamental misunderstanding of what Brady is. There's  
22 nothing been concealed from anybody. This case has been fully  
23 tried. Everything is on the record.

24 The allegation is Your Honor just doesn't understand  
25 the record and that you didn't hear the testimony that was

1 presented. I don't join in that, of course. Everybody  
2 understands what was presented. It's clear without question  
3 that the vets testified that the Defendant ordered these drugs  
4 and had the vets administer these drugs to them. It's a  
5 violation of the statute.

6 And on their end, made sure that the co-conspirators,  
7 including the Defendant, weren't caught by engaging in conduct  
8 that concealed their criminal acts by back-dating the records  
9 and submitting to the Department of Agriculture these vet  
10 records. This is not the third Rule 29 reconsideration motion,  
11 this is the time set for sentencing, and Your Honor has already  
12 ruled on this point.

13 MR. GOLDMAN: Your Honor, one last statement. The  
14 conspiracy to present the false documents was a conspiracy just  
15 joined in by the veterinarians. All the veterinarians, each of  
16 them testified, and I have citations to the record, if the  
17 Court is interested in that, to say that they did that. They  
18 never sent her one of these vet treatment sheets, for example.  
19 They never discussed these sheets with her. And so she's not  
20 part of that fraud conspiracy.

21 That fraud conspiracy is limited to Korte, Motta, and  
22 Brophy, and their confederates, but not to this Defendant. And  
23 you can't enhance the sentencing to a felony unless there's  
24 evidence that shows she joined in that part of the fraud. A  
25 mere violation of a state regulation is not fraudulent conduct.



1 There must be more.

2           We cited and I assume the Court read our law in our  
3 sentencing memoranda. They have to show that she was aware of  
4 the misrepresentations and she went along with them or she  
5 participated in the misrepresentations. And there's zero  
6 evidence. In fact, it's stronger than zero evidence because  
7 the people who did it said that she was not involved in that  
8 and was not aware of that. And because of that, she cannot be  
9 sentenced to a felony.

10           MR. BEHE: Your Honor, the law of conspiracy is quite  
11 clear that co-conspirators are responsible for the conduct of  
12 the other members of the conspiracy if it's something that's  
13 reasonably foreseeable as part of the conspiracy. In this case  
14 where they are talking about illegally administering drugs to  
15 horses on race day, concealment is clearly something that would  
16 be contemplated by the parties in this case. That the vets  
17 would do something is a reasonably foreseeable consequence in  
18 this case. And the jury's finding, again, was that this was  
19 committed by fraud.

20           MR. GOLDMAN: It's not me, it's the Government that  
21 doesn't understand conspiracy.

22           THE COURT: I stand by my ruling, and I support the  
23 findings of the pre-sentence report. Mr. Goldman, do you have  
24 other arguments you wish to make?

25           MR. GOLDMAN: Well, we still have other objections,

1 Your Honor.

2 THE COURT: The one objection was the amount of the  
3 loss. There was no objection to the memo of Mr. Behe of  
4 January 9, 2019, despite efforts by this Court to contact  
5 counsel as to what his position was. So the Court accepts the  
6 loss as stated in the January 9th, 2019, letter, from Mr. Behe  
7 to the Court.

8 MR. GOLDMAN: I don't understand. I want to make  
9 argument on the loss.

10 THE COURT: Go ahead.

11 MR. GOLDMAN: There was no evidence whatsoever  
12 presented at trial that Murray Rojas received any of the  
13 proceeds from the race, number one. Number two, there was no  
14 evidence that the administration of any drugs resulted in any  
15 of the purses being won. In fact, there is no evidence  
16 whatsoever that these were performance enhancing drugs. As a  
17 matter of fact, the Government prevented us, and you prevented  
18 us, from showing that these were not performance enhancing  
19 drugs.

20 And so based upon their failure to show any money  
21 going to Murray Rojas, they failed to call any owners to say  
22 that the owners were unaware of the administration of the  
23 drugs, and that they were in any way affected, there was no  
24 evidence presented in this court to support any of that.

25 The Penn National has a per se rule that's published

1 to all the public that says if any of the races are overturned  
2 as a result of any violation, your winnings or your losses are  
3 not going to be changed as a result of that. The betting  
4 public knows that, and so there is no victim here. There are  
5 no losses proven by the Government in this case. And the loss  
6 amount is not proper in this case.

7 THE COURT: Mr. Behe.

8 MR. BEHE: Yes, Your Honor. It doesn't matter  
9 whether Mrs. Rojas pocketed a dime from this. The fact that  
10 she, through this illegal activity, trained and raced horses  
11 for other individuals won the purse money as a result of having  
12 her horse entered when it should have been disqualified  
13 deprived other contestants of that money and benefited whoever  
14 the owner was of that horse and the purse proceeds were thus  
15 distributed.

16 She gets her percentage. But whether she got the  
17 entire purse or some of the purse or none of the purse, the  
18 fact that she won it and it was distributed to others by  
19 running horses that should have been disqualified and never  
20 entered at all establishes the loss. It's gain as well that  
21 can be considered under 2B1.1, gain of others.

22 MR. GOLDMAN: Let me give you an example, Your Honor,  
23 why a mere violation does not result in a loss. There's other  
24 rules and regulations; for example, that jockeys must wear a  
25 certain, you know, type of colors or a silk or whatever. Now

1 if they're in violation of any of those violations, they per se  
2 should not be racing.

3 But those violations don't show that those violations  
4 caused the winning of the race. The administration of  
5 therapeutic drugs in this case, non-performance enhancing drugs  
6 in this case, there's no evidence resulted in her winning the  
7 race. The Government's argument is merely in this case that  
8 the mere violation dictates that these losses should be  
9 awarded. There's no support. The burden is on them. There's  
10 no support on those dollar figures.

11 THE COURT: The Third Circuit will have to figure  
12 this one out. I've made my ruling. I'd like to have you  
13 discuss the Brady. I know it was mixed in with your first  
14 argument. But do you want to give me your argument on failure  
15 to provide Brady material?

16 MR. GOLDMAN: Yes, Your Honor. Your Honor, in your  
17 last ruling, the memorandum on our motion to vacate the  
18 misbranding, we had been raising for the past two years the  
19 argument that the terms dispense and administer are separate  
20 and apart. The Government has used them interchangeably  
21 stating that they mean the same thing in spite of the United  
22 States Supreme Court in an earlier case saying that these terms  
23 have separate and distinct meanings.

24 The Court in its memorandum, in the final memorandum,  
25 agreed with us that the terms dispense and administer do have

1 separate and distinct meanings. But the Court denied the  
2 motion to vacate the misbranding statute on the basis of  
3 there's evidence in this case that the vets dispensed, that the  
4 vets dispensing is that they sell her drugs for her own use.  
5 So you said that was evidence of dispensing. And in some  
6 instances, for her own use, they dispensed.

7 I have horses. They dispense to me. That doesn't  
8 make a violation. The Court found that there was a violation  
9 that after the dispensing, they then used those drugs to  
10 administer to horses. And because of that, the Court found  
11 that there is misbranding. There was dispensing to her and  
12 then using those drugs to administer.

13 There is no evidence whatsoever in the record that  
14 supports what the Government -- I'm sorry, what Your Honor  
15 found. Mr. Behe knows that. Brady violations occur when the  
16 Government is aware of something that's material to the issues  
17 at sentencing. There could be nothing more profound for this  
18 sentencing that the Court's basis for upholding the misbranding  
19 is based on a misinterpretation or misreading or misperception  
20 of the facts. The Government knows that.

21 The Government has the affirmative duty to either  
22 show in the record that we're wrong or advise the Court that  
23 you misperceived those facts. Failure to do so is a Brady  
24 violation. So that Brady violation will stand and will affect  
25 this entire sentencing because we wouldn't even be here for a

1 sentencing if the Court had not misperceived the facts. And  
2 the Government knows.

3 I have been trying by telephone, e-mail, letter, and  
4 sentencing memorandum, and also in the motion to reconsider  
5 your findings to get the Government to show where we're wrong  
6 or to admit that we're right. They can't be silent. A Brady  
7 obligation is an affirmative duty. A prosecutor cannot sit and  
8 standby while my client gets sentenced for misbranding based  
9 upon a misperception of the facts by this Court. That's the  
10 Brady violation.

11 MR. BEHE: That isn't Brady.

12 MR. GOLDMAN: It is Brady.

13 MR. BEHE: That isn't Brady. Brady stands for the  
14 concealment of exculpatory evidence by the Government -- do you  
15 mind?

16 MR. GOLDMAN: I'm not saying anything.

17 MR. BEHE: It stands for the concealment of  
18 exculpatory evidence by the Government. The record is clear in  
19 this case. There's nothing that the Government kept out of the  
20 record. There's nothing that's exculpatory that we kept from  
21 the Defendant. The Defendant just disagrees with Your Honor's  
22 well-reasoned review of the evidence and the interpretation of  
23 the law and is expecting me to tell you that you're wrong when  
24 you adopt our viewpoint.

25 And we agree with you. You sat through the trial.

1 You heard the evidence in this case. Your Honor said  
2 specifically that there is no temporal requirement here that  
3 the dispensing and the administering occur, you know, at  
4 certain times. The fact that she purchased them and had them  
5 administering is the dispensing. Your Honor ruled in this  
6 matter. There is no --

7 THE COURT: Twice.

8 MR. BEHE: Yes. And with regards to the particular  
9 allegation that it's a Brady violation, that's just a  
10 misunderstanding of Brady. I saw the case out of the Western  
11 District that's cited throughout the Defendant's sentencing  
12 memorandum. That just is a case where the prosecutor withheld  
13 information, withheld information concerning their view of the  
14 credibility or lack of credibility of one of their key  
15 witnesses, failed to indicate that they weren't going to call  
16 that witness.

17 It was just a horrible record of concealing evidence  
18 that the Court disciplined the prosecutor for there. There is  
19 no such withholding of evidence in this case. He disagrees --  
20 the defense disagrees with you. That's what the appellate  
21 court will rule on.

22 MR. GOLDMAN: We're going to sentencing now, Your  
23 Honor, with no citation to the record by the Court or the  
24 Government for the notion that she purchased drugs and then  
25 those drugs were used -- those drugs were used to administer to

1 horses. It doesn't exist in the record. I've read the record  
2 three, four times. It appears nowhere in the record. So it's  
3 a misperception by the Court.

4           The evidence here is, in a light most favorable to  
5 the Government, is that Murray Rojas had the vets administer  
6 drugs and then sometime in the future she was billed for those  
7 services. That's administering as opposed to dispensing. The  
8 Court made the factual finding that the drugs were first  
9 dispensed to her and then those exact drugs were used to  
10 administer to the horses. It doesn't exist in the record. The  
11 Government knows that. That's a Brady violation. That's a  
12 concealment.

13           If I'm wrong on that, have them point out to you,  
14 Your Honor. I mean, this is a woman with no prior criminal  
15 record that's now going to be sentenced by you to a potentially  
16 extraordinary long period of time who's innocent of these  
17 offenses and innocent because there is no support to the  
18 Court's factual findings.

19           That's material to sentencing. It isn't victory or,  
20 you know, you don't just, you know, check off, I got another  
21 Defendant, or, we convicted a trainer. That's not the role of  
22 a prosecutor.

23           The role of a prosecutor is to seek justice not  
24 victory. And in this case, justice is telling you, Your Honor,  
25 that factually, you're wrong on that finding. And it's not



1 cited by you, and it's not cited by Mr. Behe anywhere that your  
2 factual findings are correct. And I'm stating to you in  
3 reading this record thoroughly and multiple times, there's no  
4 evidence to support your factual findings.

5 THE COURT: I'll let the Third Circuit make that  
6 decision. Any other arguments that you wish to make because I  
7 do have some other questions?

8 MR. GOLDMAN: I'm sorry, Your Honor?

9 THE COURT: I said, do you have any other arguments?  
10 But I have some questions that I need to ask you.

11 MR. GOLDMAN: Yeah, that's fine, Your Honor. Next  
12 question.

13 THE COURT: All right. You say she should be charged  
14 with a misdemeanor as the veterinarians have apparently been  
15 charged, correct?

16 MR. GOLDMAN: No, I'm saying she should be charged  
17 with a misdemeanor based upon the failure to show the necessary  
18 elements to make it a felony not on the mere --

19 THE COURT: But you say it's a disparity between the  
20 treatment to the vets and her treatment?

21 MR. GOLDMAN: Yeah, that's a separate argument.

22 THE COURT: Well, I want to hear your argument on  
23 that.

24 MR. GOLDMAN: Right, okay. The disparity in this  
25 case is this. The Government started this case four years ago

1 with serving 10 target letters on trainers, advising me that  
2 after those 10 were convicted, there would now be 40 trainers  
3 who would ultimately be charged in this case with violations.

4           What happened in this case, based upon this trial and  
5 their theory of this case, you know, going to Hell during this  
6 trial, the United States Attorney's Office has decided to bring  
7 no additional charges against any trainers, just leaving Murray  
8 Rojas as the scapegoat in this case. The trainers in this  
9 case, the Government will make -- I'm sorry, the veterinarians  
10 in this case -- oh, they also shopped this case to the Attorney  
11 General's office.

12           After their office decided, we're not going to go to  
13 with this case anymore in federal court, they attempted to get  
14 the Attorney General's office to bring state prosecutions.  
15 Attorney General's office said, we don't want to have anything  
16 to do with that. Leaving her again as the sole scapegoat in  
17 this case.

18           The veterinarians have committed the administration  
19 of drugs thousands of more times than it's alleged that Ms.  
20 Rojas did. And in those cases, the interesting thing is, and  
21 the Court may recall, they're given a misdemeanor plea. I'm  
22 sure you'll say, and the Government will say, they cooperated.  
23 Yes, they cooperated.

24           They were able, with the Government, to keep all  
25 their ill-gotten gains, all their proceeds, which was hundreds

1 of thousands of dollars -- it's in the record, I read that last  
2 night -- up to potentially a million dollars. Brophy, Motta,  
3 and Korte could keep all that. And their sentencing just keeps  
4 being pushed down the road.

5           Now the Government contends there's no plea agreement  
6 as far as what their sentence is going to be. Now you know,  
7 Your Honor, and I know, and Mr. Behe knows, these people are  
8 going to get probation at the end of the day. They've been out  
9 here now for at least four years, still practicing their trade.  
10 We established that at the time of trial that, I believe it was  
11 Motta, even when he's kicked off at Penn National, is selling  
12 horse drugs out of his truck right at the gates with trainers  
13 coming in and trainers going out.

14           So when we're talking about disparity, yeah, there's  
15 a significant disparity in this case. The significant  
16 disparity here is -- the jury recognized there's no fraud in  
17 this case. They threw out the mail fraud and wire fraud  
18 counts. But the disparity in this case is the lone woman who  
19 stands up to the Government and says, I'm not guilty of these  
20 offenses, I'm legally not guilty of these offenses, is now  
21 facing two and a half to, what, three and a half years, while  
22 the perpetrators of the crime, the veterinarians, get  
23 probation, get a misdemeanor plea. And all those 40 trainers  
24 that were going to get charged are still racing at Penn  
25 National.

1           That's a disparity. That's a disparity. And that  
2 should be taken into consideration by this Court as far as a  
3 variance is concerned on what should happen to Murray Rojas  
4 when no one, even the main evil people in this, you know, keep  
5 their money, don't go to jail, keep their profession. Murray  
6 Rojas, Your Honor, she lost -- she was kicked off the track,  
7 you know, the day of the verdict.

8           Her husband was kicked off the track for being a  
9 husband the day of the verdict. It took us a year to go up to  
10 the Commonwealth Court and get that reversed. And then we went  
11 to the hearing because we wanted now to be vindicated that her  
12 husband had no right to be kicked off the track, and you know  
13 what happened? Penn National withdrew their claim.

14           Eddie Rojas, her husband, lost all of his stalls, all  
15 of his stables at Penn National. He lost all that income for a  
16 year or two while we took it up to the Commonwealth Court. And  
17 they're impoverished. Yeah, there's a sentencing disparity  
18 here.

19           THE COURT: Mr. Behe.

20           MR. BEHE: Yes, Your Honor. I cannot predict what  
21 sentence the veterinarians will get in this case, but I can  
22 honestly tell the Court I will be recommending that my office  
23 consider a 5K1 motion. Their guidelines far exceed what the  
24 statutory maximum, I believe, is in these offenses. But it's  
25 comparing apples and oranges to try and put the Defendant in

1 the same position as the veterinarians.

2 I don't believe Ms. Rojas had any money taken from  
3 her. None of her purses were required to be returned in this  
4 case. The vets have been barred from the racetracks as well.  
5 They just haven't had their license taken away because until  
6 they are sentenced in the Commonwealth, it's not considered to  
7 be a conviction.

8 But they cooperated before they were even charged.  
9 They sat down with the United States, reviewed their records to  
10 explain everything that was going on. It's an extraordinary  
11 example of cooperation with the United States. In essence,  
12 each one of them was like the Rosetta Stone. They were able to  
13 take records and translate them for us, for the investigators,  
14 where they would otherwise not be able to do so because of the  
15 way of the back-dating and the coding of the bills and the  
16 submission of the false reports to the racing commission.

17 Yes, they are in different situations. And yes, they  
18 substantially assisted the United States in this case by coming  
19 in well before charges were brought against them, and the  
20 charge against them was a negotiated one in light of their  
21 cooperation to allow them to plead guilty to that offense  
22 without making it a three-year felony because of their  
23 substantial pre-charge cooperation with the Government.

24 Crimes have consequences. And if that's what  
25 happened to Ms. Rojas, and collaterally to her husband, that

1 was rectified when they withdrew it, that's a consequence of  
2 engaging in this criminal activity.

3 MR. GOLDMAN: One thing I neglected, Your Honor, if I  
4 could just supplement. Crimes have consequences. Stephanie  
5 Beattie, who is a far worse example of administering drugs to  
6 horses, is a Government witness, not charged whatsoever.  
7 Bridgette Poe, who went with Motta and Korte and Brophy to  
8 administer drugs, and she administered drugs, not charged in  
9 this. Cynthia Deaven, who also was involved, in fact involved  
10 in preparing false veterinarian reports, not charged in this  
11 case.

12 So when we're talking about a disparity, you  
13 certainly have a right for variance purposes to take into  
14 consideration how Murray Rojas is being treated. And mind you,  
15 Your Honor, she didn't take the stand and commit -- no one can  
16 argue that she falsely testified in this case. She is standing  
17 on the fact that she didn't commit this crime legally. And  
18 that will be, you know, that will be sustained by the Third  
19 Circuit, I'm certain of that.

20 But she's being sentenced now because she had the  
21 gall or the gumption of being, you know, in this case a woman  
22 who says, I'm not guilty of this, I'm not guilty of this. And  
23 all the other people actually gained as a result of her strong  
24 stand. All those other trainers who were going to be indicted  
25 and convicted of a felony, if the Government had their way, are

1 still racing at the racetrack.

2 I mean, she was the one, the woman who put her finger  
3 in the dam and showed that this was a bad faulty prosecution by  
4 the Government. And now what? We throw her into prison?  
5 Cinder block walls for years? Leaving her five daughters to  
6 fend for themselves while her husband Eddie tries to repair the  
7 business that the Government took away from him, that Penn  
8 National took away from him? Where's the justice in that?

9 THE COURT: I'll listen to any other arguments that  
10 you have that we haven't covered.

11 MR. GOLDMAN: Yes. I wanted -- if you have the  
12 objections in front of you, I said that the -- it's improper  
13 for -- the probation office is to do an independent evaluation  
14 of the evidence. They presented a one-sided view, which was  
15 the Government's view, of the evidence in this case. In  
16 paragraph 5, which is my second objection --

17 THE COURT: Where?

18 MR. GOLDMAN: Paragraph 5.

19 THE COURT: Are you reading from your --

20 MR. GOLDMAN: I'm reading from my objections, Your  
21 Honor, my written objections to Ms. Baker-Dowd. I started with  
22 saying, it's not proper to simply rely upon the information  
23 provided by the Assistant United States Attorney.

24 MR. BEHE: Page 5 or paragraph 5?

25 MR. GOLDMAN: Paragraph 5. If we're looking for a

1 fair and independent evaluation, which I'm sure the Court would  
2 agree is the requirement of the probation office, they should  
3 have contacted me for a counter-statement of the evidence  
4 presented at trial. And what I did in my July 2nd, 2018,  
5 letter to Ms. Baker-Dowd was to state that the  
6 counter-statement by the defense should be added.

7 And I say, the PSR should include the following  
8 recitation. Then I go on for a page, at least a page and a  
9 half, of saying what the evidence shows in this case. And that  
10 should be added to the pre-sentence report.

11 I made other arguments regarding paragraph 9,  
12 paragraph 11, paragraph 12, paragraph 14, 15, 16, 17, 23, 24,  
13 42, 49. I made arguments on sentencing in 56, 61. And I  
14 requested changes on 63. I believe the law requires the Court  
15 to make a finding on each of those on whether or not we're  
16 permitted to have the pre-sentence report amended to include  
17 that information.

18 THE COURT: Mr. Behe.

19 MR. BEHE: Your Honor, I think by filing these  
20 objections, his objections are already part of the record.

21 THE COURT: They're attached to the record.

22 MR. BEHE: So that, I think, takes care of that.

23 THE COURT: Anything further, Mr. Goldman?

24 MR. GOLDMAN: No, Your Honor.

25 THE COURT: Pardon?



1 MR. GOLDMAN: Not on that, Your Honor.

2 THE COURT: Anything else?

3 MR. GOLDMAN: On the objections or argument?

4 THE COURT: Anything you wish to argue?

5 MR. GOLDMAN: Pardon me?

6 THE COURT: Anything you wish to argue?

7 MR. GOLDMAN: Yes, thank you, Your Honor. Your  
8 Honor, sentencing argument. Your Honor, you certainly are  
9 aware that the dictates of the Third Circuit as well as all  
10 courts in this United States is that the Court should impose a  
11 sentence that's no greater than necessary to attain the goals  
12 of sentencing. And you just -- the sentencing guidelines is  
13 merely a starting point for what the appropriate sentence is.

14 And the Court is supposed to, in determining whether  
15 a variance should be granted in this case, is to look at and  
16 consider Murray Rojas as an individual. And in this case, we  
17 have she's 53 years old at this time with no prior criminal  
18 record. She's got a great family, five daughters that are  
19 present in the courtroom and a husband. And as I just noted  
20 before, they have suffered serious repercussions of her  
21 conviction.

22 She's lost one love of her life, which is her  
23 training of race horses. She's lost that, and no one else has  
24 lost that in this case. She has lost income. She's lost her  
25 ability to be an income earner in her family. And this

1 conviction has turned her family's finances upside down. As I  
2 told you, Eddie Rojas, for being married to this woman, lost  
3 his stalls, which is right down the street from his farm. They  
4 have never given them back to him.

5           He now has to travel -- he's not here today because  
6 he's out in another state or another part of this country  
7 trying to make ends meet for this family. Their family has  
8 been destroyed financially by this case, let alone by the  
9 conviction.

10           And that is a consideration when you're deciding what  
11 kind of penalty. What kind of message is that? I'll tell you  
12 right now, there's not one trainer in this country that will  
13 say, I'll trade places with Murray Rojas. She's been the  
14 poster child. In the Paulick Report, in all the horse racing  
15 things, she's been branded as being a person, incorrectly, that  
16 she's using performance enhancing drugs. She's been vilified  
17 in the racing industry.

18           And now she's trying to make ends meet by working or  
19 opening up, you know, a soft ice cream stand. How humiliating  
20 is that for a woman that was talented in this profession? So  
21 when you are looking at this case, Your Honor, you take a look,  
22 as I said before, what's happened to the other people; what's  
23 happened to the people who just took the easy way out, pled to  
24 misbranding counts which might not be sustainable; got a pass  
25 by the Government, you know, when they were even more of a

1 serial violator than Ms. Rojas was in this case.

2           She's been punished. Her family has been punished.  
3 Her husband has been punished. Imagine that, Your Honor, if we  
4 had a case where a woman is being violated for the sins of the  
5 husband. In this case, the husband is being penalized for the  
6 sins of the wife.

7           THE COURT: I thought you said his situation has been  
8 reversed?

9           MR. GOLDMAN: This is what -- reversed in this way.  
10 The day after this jury came down, finding this misbranding, he  
11 got kicked off, get your horses out in 24 hours or 48 hours  
12 from Penn National. He had 20 some stalls, so he's a regular  
13 presence at Penn National. He could race at Penn National. He  
14 could keep his horses at Penn National. The day after her  
15 conviction, they took the stalls away from him and said, get  
16 your horses out of here, and banned him from Penn National.

17           We appealed it. They go to the hearing. And they  
18 did what the President Judge of the Commonwealth said, and all  
19 the courts agreed, was a violation of his due process. They  
20 reversed the finding that he violated the regulations and  
21 remanded it back, you know, for a new hearing. All while  
22 that's being done, he still is banned from Penn National, can't  
23 race horses, can't win.

24           THE COURT: Is that still the situation?

25           MR. GOLDMAN: He can now race, but they wouldn't give

1 him his stalls back. And stalls are key. It's an integral  
2 part. Stalls are key to a successful operation. They did not  
3 give him his stalls back. He can race there. But because he  
4 doesn't have any stalls there, he's now, you know, competing up  
5 at Presque Isle, a remote location. He's absent from his  
6 family. He's got to travel in order to win.

7           His bread and butter was Penn National. He's lost  
8 that. So what we did was, we go back and we go to the racing  
9 commission and to Penn National, okay, you can reverse for due  
10 process violations, let's have a hearing. The hearing was put  
11 off. Then a week before the hearing, where we're going to go  
12 in there and make our fight and show that he was violated, and  
13 show that they continued to violate his due process rights,  
14 they withdrew the charges. And they told us, you don't have a  
15 right to a hearing.

16           I couldn't go in there and say that Penn National  
17 violated his rights. They withdrew it and didn't give us our  
18 hearing day. And Penn National to this day hasn't given him  
19 back his stalls. And they won't give him back his stalls.  
20 They say, it's our private property, he's not getting them  
21 back. That's all because she was convicted, Your Honor.

22           Now imagine that. Most cases, the worst thing you  
23 can do to somebody is put them in a cinder block cell or a  
24 cage. But in this case, wiping out a family, wiping out their  
25 finances, I mean, that's penalty by itself. That should -- you

1 know, I believe this Court has a heart. And variances, you  
2 know, are facts that may appeal to the heart.

3           This is not a case where anything is served but mere  
4 punitive efforts, you know, by the Government to incarcerate  
5 this woman. And so, Judge, what's being accomplished when  
6 everybody else doesn't go to jail? Everybody else continues  
7 with their trade? Everybody else continues as a trainer? But  
8 they want to take this woman with no prior criminal record and  
9 incarcerate her. Why? Because she had the gumption to say, I  
10 am legally not guilty in this case, which I believe is  
11 something that this noble country and juris prudence, you know,  
12 stands for, that a person has a right to say, not to lie, not  
13 to deceive on the facts, but to say, I am legally not guilty in  
14 this case.

15           And you know what's really bad in this case and shows  
16 you the vindication? I asked Mr. Behe, you'd agree to bail  
17 pending appeal? These are substantial issues of law. He goes,  
18 no, I want her remanded today. I mean, all we're getting from  
19 the Government is a punitive face in this case. And I'll deal  
20 with that later because, you know, I'm putting this out now  
21 just to show you how vindictive the Government is in this case.

22           A white collar case, no prior criminal record. She's  
23 been convicted for four years, she hasn't fled. She knows what  
24 the sentencing guidelines are, she hasn't fled. She's got the  
25 misbranding. Have you ever seen a more cockamamie statute in

1 your life as applied to this case? And we've supplied all the  
2 law to say this is a substantial issue of law. Even the  
3 Supreme Court says something different than the Government  
4 says. And they want her to go to jail today.

5           So, Your Honor, in this case nothing is served by  
6 incarcerating Murray Rojas. If we're wrong, which I don't  
7 believe we are, she will stand as convicted. She will have  
8 that misbranding. Her life has been ruined. She can't race.  
9 She can't race at all. She can't race anywhere. That's enough  
10 of a penalty. I mean, where is the message, where is the  
11 deterrence, if this lone woman who is arguing for her legal  
12 rights is the only one here that gets incarcerated?

13           This is a case, Your Honor, you know, let us go and  
14 fight it out in the Third Circuit on who's right or who's wrong  
15 on the misbranding statute. But she doesn't deserve to be  
16 sitting in prison a day in this case under these facts.

17           THE COURT: I'll hear anything else you have to say  
18 either on her behalf or before I turn it over to her to  
19 exercise her right to speak.

20           MR. GOLDMAN: She's not going to speak, Your Honor.

21           THE COURT: Okay.

22           MR. GOLDMAN: We thank you for that opportunity.  
23 She's aware she has that opportunity. Your Honor,  
24 respectfully, I believe in the course of this trial, the Court  
25 went along with all the arguments made by the Government

1 practically in this case, which was your prerogative, you  
2 thought they were right on their legal arguments. On the  
3 motions to vacate, you went along with the Government's  
4 arguments, which is your prerogative.

5 But now it's sentencing. I don't believe it's the  
6 role of a sentencing court in the United States, in federal  
7 court particularly, to just go along with the Government at  
8 sentencing. And I don't believe that it's proper in a case  
9 where the Government -- where the appellate courts say and the  
10 Supreme Court says you take every individual as a unique person  
11 and you only sentence to a sentence that's no greater than  
12 necessary to accomplish the goals of sentencing.

13 In this case, Your Honor, I'm respectfully requesting  
14 that you do use your wisdom, use your discretion, and impose a  
15 sentence on this very fine woman with an excellent family who  
16 does good. Hopefully you read those letters, the character  
17 letters. You know, she has been defined by all those who wrote  
18 sentencing letters as being a woman who takes care of her  
19 horses.

20 She's been contributing in starting these  
21 organizations that save horses that are now too old, you know,  
22 to race on our racetracks. And what do all these people say?  
23 All the horses that Murray brings to us, she doesn't bring us  
24 these horses when the horses are broken down and too damaged to  
25 win. Her horses have been turned into dressage horses, jumping

1 horses, pleasure horses. Other trainers? Glue factory. Meat  
2 to Japan or Canada. That's what they do.

3 That demonstrates that in this case there was no --  
4 as a matter of fact, all the veterinarians say, all the  
5 therapeutic drugs, these were all therapeutic drugs that were  
6 given to horses and were not for performance. They were for  
7 the good of the horse. They were for the good of the horse.  
8 She deserves jail under these guidelines?

9 And so, Your Honor, I'm asking you to use your  
10 independence. In this case now at sentencing, use your  
11 independence and treat her as an individual, not just being  
12 defined by the Government, not just being defined by the  
13 sentencing guidelines, and not being defined by, you know, a  
14 strange misapplied statute in this case. There is nothing to  
15 be accomplished by penalizing her further.

16 Do you want me to take up the bail issue now?

17 THE COURT: Go ahead.

18 MR. GOLDMAN: Your Honor, for purposes of bail on  
19 appeal, the Defendant needs to show they're not a risk of  
20 flight or danger to the community. Her alleged criminal  
21 activity goes back as far as seven years ago. That's something  
22 I should have brought up also. What you're sentencing her on  
23 today took place five to seven years ago, not recent in time.  
24 No allegations more recent than that. Five years ago.

25 She's known since getting that target letter that she



1 was going to be indicted. She knew since the indictment she  
2 was going to be tried. She's known since sentencing that she's  
3 going to be sentenced. She hasn't fled. And these are not  
4 crimes which the statutes or law would consider to be, you  
5 know, crimes of danger to the public. So she meets that  
6 criteria.

7           The next criteria is whether or not there's  
8 substantial questions of law or fact which will likely result  
9 in a reversal and order for new trial or a sentence that does  
10 not include a term of imprisonment. I have articulated at  
11 least 17 issues which meet those criteria.

12           THE COURT: Anything further before I turn it over to  
13 Mr. Behe?

14           MR. GOLDMAN: Well, I would ask you to consider  
15 these. These are all --

16           THE COURT: At the moment, I don't need to because I  
17 intend to have her self-report.

18           MR. GOLDMAN: Thank you, Your Honor.

19           THE COURT: And I can make a decision up until that  
20 time.

21           MR. GOLDMAN: Thank you, Your Honor.

22           THE COURT: Mr. Behe.

23           MR. BEHE: I think it's important again to start with  
24 the 3553(a) factors since that's what guides the Court here.  
25 And I think it's important to put aside all of the background

1 noise accusing prosecutors of Brady violations, ethical  
2 violations, somehow manipulating the Court through the trial  
3 process to rule in our favor in certain motions in certain  
4 ways, adopting our position as if we're some puppet master of  
5 the Court.

6 I don't -- I could never think of making such an  
7 argument to the Court that's being made here. But it's  
8 important to focus only on what the law is, and that is the  
9 3553(a) factors. And 3553(a) provides that the Court shall  
10 impose a sentence that is sufficient but not greater than  
11 necessary to comply with the purposes set forth in paragraph 2  
12 of that section.

13 One of those is that the purpose of the sentence or  
14 the need for the sentence imposed is to reflect the seriousness  
15 of the offense, to promote respect for the law, and to provide  
16 just punishment for the offense. In this case, the evidence  
17 shows that the Defendant just completely flaunted the rules and  
18 regulations governing how this sport is conducted in  
19 Pennsylvania.

20 She sits here not getting acceptance of  
21 responsibility. She's defiant. She says she did nothing  
22 criminal. In this particular case, a sentence within the  
23 guideline range would, in fact, promote respect for the law,  
24 reflect the seriousness of the offense, and provide just  
25 punishment.

1           The second factor is to afford adequate deterrence.  
2 A sentence of incarceration would most certainly deter any  
3 other trainer or individual so situated if they were thinking  
4 of engaging in this type of criminal activity to see that  
5 rather than a hundred dollar fine, or a hundred fifty dollar  
6 fine, and suspension for a week from the track is the -- that's  
7 why everything continued, to show that this, in fact, is a  
8 serious violation of federal law designed to protect this  
9 industry and would, in fact, deter others who might be thinking  
10 of engaging in this criminal conduct.

11           I would also note that the pre-sentence report  
12 contains a victim impact statement from Penn National that  
13 says, "On behalf of Penn National Gaming, Inc., and Hollywood  
14 Casinos, we would like to state that the criminal actions of  
15 Ms. Murray Rojas, as affirmed by this Court, have eroded the  
16 public perception of and trust toward our track and company,  
17 the billion-dollar horse racing industry in the Commonwealth,  
18 and the sport of horse racing in general.

19           For many years, Ms. Rojas trained and raced  
20 extensively at Penn National Race Course and other tracks owned  
21 by our company. Ms. Rojas was prominent among the upper  
22 echelon of trainers at Penn National, winning multiple training  
23 titles by winning the most races in a calendar year. Based on  
24 evidence presented during her trial, and the verdict of this  
25 Court, the integrity and outcomes of those victories are

1 tainted.

2           The public, the industry, and our company have been  
3 irreparably harmed by Ms. Rojas' criminal endeavors to win at  
4 any cost. Nothing is more important than maintaining the  
5 integrity of racing, which includes the ethical treatment of  
6 horses. These majestic animals are the heart of the industry  
7 and sport and must be treated humanely and not used as tools to  
8 further a criminal enterprise. Likewise, there is no industry  
9 without an engaged, trusting public.

10           For more than 45 years, Penn National Race Course has  
11 been welcoming families and bettors to its facility to enjoy an  
12 evening of entertainment at the races. Ms. Rojas' actions do  
13 nothing to lessen the public's skepticism regarding the motives  
14 and actions of participants in the sport, leading individuals  
15 to lessen, or in many cases divest themselves of, active  
16 participation and interest in horse racing.

17           This impact can have significant and far-reaching  
18 economic consequences. The wagering public, whose betting  
19 dollars fuel purses and revenues for horsemen and the industry,  
20 will seek other alternatives for their entertainment dollars.  
21 According to the statistics from the Pennsylvania Gaming  
22 Control Board's annual pari-mutuel benchmark report, wagering  
23 on Pennsylvania racetracks has declined over 11 percent from  
24 2013 to 2017.

25           Future investors in race horses may also decide to

1 allocate their capital to pursuits where they know they will be  
2 competing on an even playing field. These losses create a  
3 vicious downward spiral that ultimately impacts jobs and the  
4 agriculture industry in the Commonwealth and beyond.

5           We feel strongly that the Court should take every  
6 available action at its disposal in the sentencing of Ms. Rojas  
7 to show the horse racing community, and the public at large,  
8 that such illegal activities will not be tolerated and such  
9 individuals face significant consequences should they attempt  
10 to go outside the established boundaries of the rules of  
11 racing."

12           With regards to the hardship to the Defendant. As  
13 Mr. Rojas has lost 20 stalls, their farm is a mile away from  
14 the racetrack. Yes, she isn't allowed to race there, but  
15 neither are the vets. The focus is always off of her conduct  
16 and what she did and what she has not admitted to. In this  
17 particular case, the Defendant was engaged in this criminal  
18 activity knowingly and fraudulently and deserves to be  
19 sentenced within the advisory guideline imprisonment range for  
20 that conduct.

21           I disagree strongly with Mr. Goldman when he asks  
22 that she be released on bail pending appeal. While it says  
23 that the Court should -- could release somebody, it starts out  
24 by saying that a person who has been found guilty of an offense  
25 and sentenced to a term of imprisonment should be detained

1 unless the judicial officer finds by clear and convincing  
2 evidence that the person is not likely to flee or pose a danger  
3 to the safety of any other person or to the community and that  
4 the appeal is not for the purpose of delay and raises a  
5 substantial question of law or fact likely to result in a  
6 reversal and order for a new trial or a sentence that does not  
7 include a term of imprisonment or a reduced sentence to a term  
8 of imprisonment less than the total of the time already served.

9           This case is not complex. This case is very straight  
10 forward, simple, and factually driven. Your Honor looked at  
11 all of the evidence, wrote a well-reasoned opinion explaining  
12 how this is a very simple straight-forward case --

13           THE COURT: This Court could be wrong.

14           MR. BEHE: Well, you would have to make a finding  
15 that you are likely to be reversed or that your rulings are  
16 likely going to result in a new trial. I don't see anything  
17 that would result in a reversal -- I can't predict what would  
18 happen. But you would have to make that finding, I will let  
19 you out on bail because I think I'm going to be reversed or I  
20 think there is going to be a new trial in this case. And I  
21 don't see that in this case at all.

22           There's nothing novel about this fact situation, and  
23 there's nothing complex about this statute. Your Honor  
24 explained in your opinion that it was pretty straight-forward.  
25 The only thing that was making it complex was the Defendant's

1 interpretation and spin on the law. So with that, I think a  
2 sentence within the advisory guideline range would be  
3 appropriate.

4 I know Your Honor is going to allow her to  
5 self-report, but I would ask the Court not to permit her to  
6 remain free on bail while this appeal is pending for those  
7 reasons.

8 MR. GOLDMAN: Your Honor, brief rejoinder on those  
9 comments, particularly the victim impact statement. The  
10 reality here is that Penn National got its nose bloodied during  
11 this prosecution because it came out that one of their stewards  
12 had said that, you know, whatever you're doing, you can  
13 continue doing in these cases because the lab results are  
14 coming up fine.

15 It's interesting that all these other trainers who  
16 got target letters and were going to get indicted are still  
17 racing at Penn National. So Penn National is really concerned  
18 about, you know, cleaning up its own business. They say that  
19 there is potential financial losses here. There's no evidence  
20 that they lost a dime, you know, since the conviction of Murray  
21 Rojas that's attributable to Murray Rojas.

22 Their notion that there's a downward spiral, that's  
23 throughout the United States because, you know, people's  
24 attitudes changed towards different sports. The horse racing  
25 industry does not have the panache that it once had, the game

1 of kings. It's not present in the United States anymore. You  
2 got millennials that could care less about seeing a horse  
3 that's racing at a track.

4           It's a changing climate. It's not driven by Murray  
5 Rojas', you know, conviction or the evidence that came out in  
6 this case. And it's ridiculous for Penn National, even the  
7 Government, to assert that she somehow or other didn't deal  
8 humanely with the horses. All the vets testified, I read it  
9 this weekend, that everything they did in this case was for the  
10 good of the horse, for the health of the horse. There's no  
11 evidence about treating these horses inhumanely. So it's  
12 ridiculous for Penn National to have even written that letter  
13 and make that allegation and also for the Government to argue  
14 that to the Court.

15           And the Government has it totally wrong on the basis  
16 for bail on appeal. To say to this Court that you have to find  
17 right now, Judge, that you made a mistake and you're going to  
18 be reversed as a basis is ludicrous. Because if you believe  
19 you had made a mistake, you would have already granted that.  
20 That's like saying then in any case, unless a judge is willing  
21 to say, I really screwed up, there's a right to bail. That's  
22 not what the case law says.

23           When we're talking about substantial issues of law,  
24 you know, one is whether or not, if we're right on appeal, that  
25 it would result in no prison time. Well, if I'm right that



1 it's a misdemeanor offense and not a felony, zero to six  
2 months. That meets that criteria.

3           Is it likely to be reversed? The Court may recall  
4 that you permitted the hearsay evidence coming in as far as the  
5 bad -- let me give you background here because it's been a  
6 while. When they first indicted my client on an X number of  
7 races, there wasn't one bad urine test, one bad laboratory  
8 test. It wasn't until the second superseding indictment they  
9 brought in through hearsay that some of her horses had a  
10 positive testing after a race.

11           The allegation wasn't that those drugs were given on  
12 race day, just that they had substances in their body. The  
13 United States Supreme Court, you can't bring in laboratory  
14 results unless you bring in the chemist. You can't bring these  
15 in unless you establish the chain of custody. This Court, at  
16 the urging of the Government, permitted the laboratory results  
17 coming in, the positive's, without a chemist and without a  
18 chain of custody being established.

19           The Government conceded in the record they no longer  
20 had the chemist and they no longer had the barn reports which  
21 established chain. That alone is going to lead to reversal in  
22 this case, separate and apart from the misbranding statutes.  
23 And the issue is whether or not, you know, there is  
24 disagreement, legitimate disagreement on the law in the  
25 misbranding, dispense versus administer. Supreme Court says

1 they're different. Mr. Behe says they're the same. I'll put  
2 my money on the Supreme Court.

3 But there's the disagreement there. And so if we're  
4 right, and the Supreme Court, you know, if the Third Circuit  
5 says the Supreme Court sounds pretty good to me over Mr. Behe,  
6 we got a new trial or we got a vacating of the sentence. Each  
7 of those 15 are solid grounds for reversal, solid grounds for  
8 probationary sentence, serving no time, and not even award of a  
9 new trial. Some of those remedies will get us a new trial.  
10 Then we'll see.

11 They wouldn't bring one more prosecution in this case  
12 against the other trainers. Are they going to bring another  
13 case against Murray Rojas? I doubt it. If they do, we'll win  
14 that one. We'll go to trial on misbranding. So this case,  
15 this case meets all the criteria. When you go and actually  
16 look at Third Circuit law to what the criteria is for a  
17 substantial issue of law, there's no case like this that nails  
18 every one of the factors that are under consideration.

19 I would ask you, you say you're not going to -- you  
20 say that she can self-report, I guess you're not going to give  
21 her probation, you're going to give her a prison sentence.  
22 Will you please make a ruling on the bail pending appeal with  
23 enough time for me to prepare and file an appeal to the Third  
24 Circuit before she's incarcerated? I ask for that courtesy  
25 because she should not be sitting one day in jail when we have

1 all these, you know, strong legal arguments which have been  
2 preserved, you know, on the record here, Your Honor.

3 THE COURT: Anything further from anyone?

4 MR. BEHE: No, Your Honor, thank you.

5 THE COURT: I'm going to take a recess for 15  
6 minutes.

7 COURTROOM DEPUTY: Court's in recess.

8 (Recess taken at 10:43 a.m. and proceedings  
9 reconvened at 11:04 a.m.)

10 THE COURT: Will counsel and the Defendant approach.  
11 (Complied.)

12 THE COURT: Anybody have anything further to add?  
13 Mrs. Rojas, you do understand you have the right to make a  
14 statement on your own behalf? Do you understand that?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: And it's your desire not to, is that  
17 correct?

18 THE DEFENDANT: Yes.

19 THE COURT: Anyone else?

20 MR. GOLDMAN: No, Your Honor.

21 MR. BEHE: No, thank you, Your Honor.

22 THE COURT: You know, in the 40 years I've been on  
23 this bench, this has been a very difficult case. I've listened  
24 to all the arguments, and I'll make the following decision.

25 AND NOW, this 6th day of May, the year 2019, the

1 Defendant appearing for purposes of sentencing. Pursuant to  
2 the Sentencing Reform Act of 1984, and after having considered  
3 the factors set forth in 18 U.S.C. Section 3553, it is the  
4 judgment of the Court that the Defendant, Murray Rojas, is  
5 hereby committed to the custody of the Bureau of Prisons to be  
6 imprisoned for a term of 27 months. This term consists of  
7 terms of 27 months on each of Counts 8 through 21, to be served  
8 concurrently.

9           The Court finds that the Defendant has the ability to  
10 pay a fine. It is ordered that the Defendant shall pay to the  
11 Clerk, U.S. District Court, the sum of 6400 dollars, consisting  
12 of a special assessment of 100 dollars on each count, for a  
13 total of 1400 dollars, due immediately, and a fine of 5000  
14 dollars, payable within 30 days.

15           Upon release from imprisonment, the Defendant shall be  
16 placed on supervised release for a term of two years. This  
17 term consists of terms of one year on each of Counts 8 through  
18 20 and two years on Count 2, to be served concurrently. Within  
19 72 hours of release from the custody of the Bureau of Prisons,  
20 the Defendant shall report in person to the probation office in  
21 the district to which the Defendant is released.

22           While on supervised release the Defendant shall not  
23 commit any federal, state, or local crimes, and shall not  
24 possess a dangerous weapon. The Defendant shall comply with  
25 the standard conditions that have been adopted by this Court

1 and with the following additional conditions:

2           One, You must not engage in an occupation, business,  
3 profession, or volunteer activity in a horse racing industry  
4 without the approval of the probation officer. Two, You must  
5 cooperate in the collection of a DNA sample as directed by the  
6 probation officer. The Court finds that the Defendant poses a  
7 low risk of future substance abuse and, therefore, suspends the  
8 mandatory drug testing requirement.

9           It is further ordered that the Defendant, Murray  
10 Rojas, surrender at the institution designated by the Bureau of  
11 Prisons before 2 p.m. on 6/3/19. The Defendant is to contact  
12 the U.S. Marshals Office no later than three days prior to the  
13 above date to be notified of the place of confinement.

14           The Court makes a record that the Bureau of Prisons  
15 usually requires a four-week time span, but that four-week time  
16 span would be Memorial Day, and the Court therefore has given  
17 an extra week of 6/3/19.

18           Now the following statement of reasons is placed on  
19 the record for the sentence that has been imposed: The Court  
20 adopts the pre-sentence investigation report without change.  
21 No count of conviction carries a mandatory minimum sentence.  
22 The fine is below the guideline range because of the  
23 Defendant's inability to pay. The sentence is within the  
24 guideline range and the difference between the maximum and  
25 minimum of the guideline range does not exceed 24 months. The

1 Court finds no basis to find for any variance or departure from  
2 the guidelines.

3 Now Mrs. Rojas, you do have the right to appeal your  
4 sentence to the Court of Appeals for the Third Circuit. If you  
5 are unable to pay the costs of an appeal, you may apply for  
6 leave to appeal in forma pauperis. And if approved, counsel  
7 will be appointed for you and you will not be required to pay  
8 any costs. You may also request our Clerk of Court to prepare  
9 and file a notice of an appeal on your behalf. Is there  
10 anything --

11 MR. BEHE: No, Your Honor, nothing else.

12 MR. GOLDMAN: I have something, Your Honor.

13 THE COURT: Yes, sir.

14 MR. GOLDMAN: Your Honor, are you denying bail on  
15 appeal?

16 THE COURT: I am not ready to -- I said --

17 MR. GOLDMAN: That's fine.

18 THE COURT: I said I will rule on it. Do you wish to  
19 file a response to this or was your response that you made  
20 orally?

21 MR. BEHE: Well, having just been presented in court  
22 with that, I wouldn't mind being able to give the Court my view  
23 of it.

24 THE COURT: Can you do that within a week?

25 MR. BEHE: I have that trial with Your Honor starting

1 next week. I'll try to -- unless Your Honor doesn't need  
2 anything beyond what I've said?

3 THE COURT: We have -- I can have Wendy transcribe  
4 your argument on this matter.

5 MR. GOLDMAN: I may supplement it with legal  
6 argument, Your Honor. Those are the grounds for appeal.

7 THE COURT: Right.

8 MR. GOLDMAN: I don't know whether or not the Court  
9 is familiar with the legal standard, etc. I'd be glad to  
10 assist.

11 THE COURT: We have our own standards that we think  
12 is a bit different than as strictly as you see it.

13 MR. GOLDMAN: I would hope so.

14 THE COURT: So it's up to you. I just need to know  
15 -- I can have an opinion out this week on this issue.

16 MR. BEHE: I'd like to be able to file something by  
17 the end of the week.

18 THE COURT: Okay.

19 MR. GOLDMAN: Can I have two days to respond?

20 THE COURT: Yes, you may.

21 MR. GOLDMAN: Thank you, Your Honor.

22 THE COURT: Court's adjourned.

23 COURTROOM DEPUTY: Court's adjourned.

24 (Proceeding adjourned at 11:10 a.m.)  
25

## CERTIFICATION

I, Wendy C. Yinger, Federal Official Realtime Court Reporter, in and for the United States District Court for the Middle District of Pennsylvania, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

/s/ Wendy C. Yinger  
Wendy C. Yinger, RMR, CRR  
U.S. Official Court Reporter  
(717) 440-1535

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